

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

FIRTIVA CORPORATION

v.

FUNIMATION GLOBAL GROUP, LLC

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Case No. 2:21-CV-0111-JRG-RSP

**PATENT LOCAL RULE 4-3  
JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT**

Pursuant to P.R. 4-3 and the Docket Control Order the Court has entered in this case (Dkt. 23), Plaintiff, Firtiva Corporation (“Firtiva”) and Defendant, Funimation Global Group, LLC (“Funimation”) hereby provide the following Joint Claim Construction and Prehearing Statement. The hearing is scheduled for December 3, 2021. The asserted patent is U.S. Patent No. 10,116,999 – claims 1, 2, 4, 7, 9, 10, 13, 15-22, 25-27, and 31-33.

**A. The Parties Joint Claim Construction and Prehearing Statement**

The parties’ claim constructions are below.

**1. Agreed Constructions**

The parties do not have constructions of any claim terms, phrases, or clauses on which they agree.

**2. Disputed Construction**

The parties’ proposed constructions are set forth in the table below. Attached as Exhibit A is Firtiva’s proposed constructions, along with its identification of all references to intrinsic and extrinsic evidence upon which Firtiva relies. Attached as Exhibit B is Funimation’s proposed constructions, along with its identification of all references to intrinsic and extrinsic evidence upon which Funimation relies.

Term <sup>1</sup>	Firtiva's Proposal	Funimation's Proposal
<p>"A computer implemented method comprising"</p> <p>"A computer comprising"</p> <p>"A system comprising"</p>	Plain and Ordinary Meaning	All claims require that any enticement received or transmitted must only occur after the broadcast so that the broadcast is not interrupted
<p>"receiving an enticement based on the embedded information, the viewing information, user information retrieved based on the user identifier, and a sponsor of the time slice corresponding to the sponsor identification"</p> <p>"the receiver further configured to receive an enticement based [on] the embedded information, the viewing information, user information retrieved based on the user identifier, and a sponsor of the time slice corresponding to the sponsor identification"</p> <p>"transmitting the enticement based on at least one of: the embedded information, the viewing information, the user information, and a sponsor of the broadcast"</p> <p>"transmit the enticement based on at least one of: the embedded information, the viewing information, the user information, and a sponsor of the broadcast"</p>	Plain and Ordinary Meaning	<p>All claims require that any enticement received or transmitted must only occur after the broadcast so that the broadcast is not interrupted</p> <ul style="list-style-type: none"> <li>- receiving an enticement must only occur after the broadcast so that the broadcast is not interrupted (claim 1)</li> <li>- the receiver receiving an enticement must only occur after the broadcast so that the broadcast is not interrupted (claim 10)</li> <li>- transmitting the enticement must only occur after the broadcast so that the broadcast is not interrupted (claim 18)</li> </ul> <p>the controller transmitting the enticement must only occur after the broadcast so that the broadcast is not interrupted (claim 27)</p>
"user identifier"	Plain and Ordinary Meaning	data used to identify a particular user

<sup>1</sup> All terms herein were proposed for construction by Funimation

“sponsor identification”	Plain and Ordinary Meaning	data that identifies a sponsor of a time slice
“user information”	Not invalid under 35 U.S.C. §112	Indefinite under pre-AIA 35 U.S.C. § 112 ¶ 2 and/or lacks written description support under pre-AIA 35 U.S.C. § 112 ¶ 1.  In the alternative, to the extent found not indefinite and supported, then:  information for a particular user
“time slice”	Plain and Ordinary Meaning	a portion of time of a complete broadcast (e.g., a 15-minute interval of a one-hour broadcast)
“end-of-slice marker that signals the end of a time slice”	Plain and Ordinary Meaning	flag that signals the end of a time slice
“enticement”	Plain and Ordinary Meaning	advertisement, coupon, discount, contest or other inducement
“the data comprising at least one of a TV channel, content name, timestamp, time slice, and sponsor identification”	Plain and Ordinary Meaning	the data must include at least one of all listed items, namely the data must include at least one TV channel, at least one content name, at least one timestamp, at least one time slice, and at least one sponsor identification

### **3. Anticipated Length of Time Necessary for Claim Construction Hearing**

The parties anticipate needing approximately 3 hours for the claim construction hearing.

### **4. Witnesses**

Unless the Court finds that live testimony of one or more experts would assist the Court, the parties do not intend to present live testimony.

### **5. Other Issues**

The parties do not identify other issues which might appropriately be taken up at a prehearing conference prior to claim construction at this time.

**B. Expert Testimony**

Each party has served or will serve disclosure of expert testimony consistent with Fed. R. Civ. P. 26(a)(2)(B(i)-(ii) or 26(a)(2)(C) for the expert on which it intends to rely to support its proposed claim construction or indefiniteness position or to oppose any other party's proposed claim construction or indefiniteness position.

Dated: September 24, 2021

<p>Respectfully Submitted,</p> <p><u>/s/ Brian R. Michalek</u></p> <p>Brian R Michalek Saul Ewing Arnstein &amp; Lehr LLP 161 North Clark Street, Suite 4200 Chicago, IL 60601 312-876-7836 Fax: 312-876-0288 Email: brian.michalek@saule.com</p> <p>Brian R Landry Saul Ewing Arnstein &amp; Lehr LLP 131 Dartmouth Street, Suite 501 Boston, MA 02116 617-912-0969 Fax: 857-400-3780 Email: brian.landry@saule.com</p> <p>Claire Abernathy Henry Ward, Smith &amp; Hill, PLLC 1507 Bill Owens Parkway Longview, TX 75604 903-757-6400 Fax: 903-757-2323 Email: claire@wsfirm.com</p> <p>Andrea Leigh Fair Ward, Smith &amp; Hill, PLLC 1507 Bill Owens Parkway Longview, TX 75604 903-757-6400</p>	<p><u>/s/ Gregory Gewirtz</u></p> <p>Gregory S Gewirtz Lerner, David, Littenberg, Krumholz &amp; Mentlik LLP 20 Commerce Drive Cranford, NJ 07016 908-518-6343 Fax: 908-654-7866 Email: ggewirtz@lerner david.com</p> <p>Jonathan A David Lerner, David, Littenberg, Krumholz &amp; Mentlik LLP 20 Commerce Drive Cranford, NJ 07016 908-518-6331 Fax: 908-654-7866 Email: jdavid@lerner david.com</p> <p>Melissa Richards Smith Gillam &amp; Smith, LLP 303 South Washington Avenue Marshall, TX 75670 903-934-8450 Fax: 903-934-9257 Email: melissa@gillamsmithlaw.com</p>
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**CERTIFICATE OF SERVICE**

The undersigned certifies the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service on this 24th day of September 2021.

/s/ Brian R. Michalek